



9TH ANNUAL U.S. DEPARTMENT OF ENERGY SMALL BUSINESS CONFERENCE

PLENARY SESSIONS

8a Business Development Program

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What is the 8(a) Business Development Program?



8(a)BD Program Objectives

(Sec. 204 of Public Law 100-656)

- “to promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals...”
- “to promote the competitive viability of such concerns...”
- “to clarify and expand the program for procurement by the United States...”



Eligibility Criteria



Social Disadvantage



Socially disadvantaged

individuals are persons who have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups, without regard to individual qualities.





Individuals are presumed to be socially disadvantaged if they are a **U.S. Citizen** and a member of one of the following groups:

- Black American
- Asian Pacific American
- Hispanic American (*includes individuals of Spanish & Portuguese descent*)
- Native American
- Subcontinent Asian American

Individuals who are not members of one of these groups must establish social disadvantage based on a **“Preponderance of the Evidence”**.



What is “Preponderance”?

Generally, preponderance is evidence of a quality and quantity which leads the decision maker to objectively conclude that the existence or truth of the facts asserted is more probable than not.



Economic Disadvantage

Economically disadvantaged

individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit.



Net worth criterion:

After excluding the individual's equity in the firm and equity in the primary residence, net worth must be less

than **\$250,000.**



NET WORTH

less
less
equals

equity in primary residence
equity in business
adjusted net worth
(must be less than \$250,000)



Other Factors Used to Assess Economic Disadvantage

- Individuals may not have excessive personal income or personal assets.
- According to the SBA's Office of Hearings and Appeals, individuals with an average two-year income over \$200,000 are not considered economically disadvantaged.
- According to the SBA's Office of Hearings and Appeals, individuals with total personal assets over \$4.1 million are not considered economically disadvantaged.



Ownership



- At least 51% unconditional ownership by the disadvantaged individual(s).
- **Partnership:** Partnership agreement must reflect 51% unconditional ownership.
- **Limited Liability Company:** Operating agreement must show the disadvantaged individual(s) owns at least 51% of each class of member interest.



➤ **Corporation:**

- Disadvantaged individuals must own at least 51% of each class of voting stock and at least 51% of all outstanding stock.
- Stock options held by nondisadvantaged individuals will be viewed as if they have been exercised.



Control and Management



- **Partnership:** Partnership agreement must reflect unconditional management by disadvantaged partner(s).
- **Limited Liability Company:** Operating agreement must demonstrate that one or more disadvantaged individuals serve as management members with unconditional control.
- **Corporation:** One or more disadvantaged individuals must control the Board of Directors.



What constitutes Control?



A Disadvantaged Individual must:

- Hold the highest position of President or Chief Executive Officer, Managing Partner or LLC Managing Member
- Devote full-time to the business.
- Possess sufficient managerial experience to run the business.



Size



Firms must be small based on their primary North American Industry Classification System (NAICS) code, including affiliates.

Size is determined either by:

- average 3 years of revenues or
- average number of employees (manufacturers, dealers, wholesalers)

See 13 CFR 121 Size Regulations or visit our website:
www.sba.gov.

For specific questions regarding affiliation, contact your local SBA Government Contracting Size Specialist.



Potential for Success



Factors considered:

- Two Year Rule: proof of two full years of operations in the firm's primary industry as verified by revenues reported on the two most recent years of Federal business tax returns.
- Financial capability: sufficient capitalization, financial performance, manageable debts, bonding capacity.
- Managerial and technical experience of the firm's managers.
- Performance on previous contracts.
- Firm has the necessary personnel, licenses, certifications, facilities, equipment, etc. to perform on contracts.



Waiver of the Two Year Rule



SBA may waive the two-year rule if all of the following five waiver conditions are met:

- The individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience.
- The applicant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success if admitted to the 8(a) BD Program.
- The applicant has adequate capital to carry out its business plan as a Participant.
- The applicant has a record of successful performance on contracts from governmental or nongovernmental sources in the primary industry category.
- The applicant has, or can demonstrate its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform such contracts as a Participant.



Good Character



What shows lack of good character?

- Adverse information regarding possible criminal conduct by the applicant or its principals.
- Violations of any SBA regulations.
- Debarred or suspended individuals or firms.
- Applicant firms and principals that lack business integrity as shown by an indictment, guilty plea or civil judgment.
- Any principal who is incarcerated or on parole or probation.
- Evidence that the firm knowingly submitted false information during the application process.
- Any firm or any of its principals that fail to pay financial obligations to the Federal Government.



Ineligible Businesses & Individual Disqualification



- Ineligible businesses: brokers*; debarred or suspended persons or concerns; nonprofit organizations. Franchises may be allowed contingent upon SBA review of the franchise agreement.
- A business may participate only once. Even if ownership and control has completely changed, firm may not re-apply.
- Any person who has used his/her disadvantaged status to qualify another firm shall be regarded as nondisadvantaged

* *A broker is a concern that adds no material value to an item being supplied to procuring activity or which does not take ownership or possession of or handle the item being procured with its own equipment or facilities.*



Application Processing



How to Apply

- Firms can apply for the 8(a) BD program on the internet using the Electronic 8(a)/SDB Application. The starting web page for the application is:
<http://www.sba.gov/aboutsba/sbaprograms/8abd/index.html>.
- This page includes links to the **Guide to the 8(a) Business Development Program**, an interactive course on all aspects of the 8a BD program; and the 8(a) Assessment Suitability Tool, which can help businesses determine if the 8(a) BD program is a good match for their firm's development needs.
- Also available on this page is a direct link to the **8(a)/SDB Application** at
<http://www.sba.gov/aboutsba/sbaprograms/8abd/application/index.html>
- Firms may also apply for the 8(a) BD program using paper forms available from District Offices or from the Forms Library on the SBA website at
www.sba.gov



8(a)BD

Contracting



A requirement is offered to the 8(a)BD program by federal procuring agencies as a result of **aggressive self marketing** on the part of the 8(a)BD firm.



Competitive threshold: When the estimated value (including options) exceeds \$3.5 million for services and construction and \$5.5 million for manufacturing, requirement will be competed among 8(a)BD firms.

Federal Acquisition Regulations (FAR): Apply to and govern 8(a)BD contracts.



Questions?